

AMENDED IN SENATE APRIL 18, 2002

AMENDED IN SENATE APRIL 3, 2002

SENATE BILL

No. 1242

Introduced by Senator Brulte

(Principal coauthor: Assembly Member Zettel)

(Coauthors: Senators McPherson and Speier)

(Coauthors: Assembly Members Correa and La Suer)

January 7, 2002

An act to amend Section 298.1 of the Penal Code, relating to criminal identification.

LEGISLATIVE COUNSEL'S DIGEST

SB 1242, as amended, Brulte. Criminal identification: specimen or sample collection: use of reasonable force.

Existing law makes it a misdemeanor for persons convicted of specified offenses to refuse or fail to provide 2 specimens of blood, a saliva sample, and a thumb and palm print impression for law enforcement identification analysis after receiving written notice of the requirement to do so.

This bill would provide that, notwithstanding the above, authorized law enforcement, custodial, or corrections personnel, including specified peace officers, may employ reasonable force to collect required specimens, samples, or print impressions from individuals who, after request, refuse to provide those specimens, samples, or print impressions. ~~The bill would provide immunity from civil or criminal liability and any adverse action by the employer to any individual, agency, or department for the good faith use of reasonable force in the collection of required specimens, samples, or print impressions. The~~

bill would require the Department of Corrections and the California Youth Authority to adopt regulations regarding the use of reasonable force. The bill would require the Board of Corrections to adopt regulations regarding the use of reasonable force for local detention facilities. The bill would also require the Department of Corrections and the Board of Corrections to report to the Legislature, no later than January 1, 2005, regarding implementation of the provisions of the bill, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 298.1 of the Penal Code is amended to
2 read:

3 298.1. (a) As of the effective date of this chapter, any person
4 who refuses to give any or all of the following, blood specimens,
5 saliva samples, or thumb or palm print impressions as required by
6 this chapter, once he or she has received written notice from the
7 Department of Justice, the Department of Corrections, any law
8 enforcement personnel, or officer of the court that he or she is
9 required to provide specimens, samples, and print impressions
10 pursuant to this chapter is guilty of a misdemeanor. The refusal or
11 failure to give any or all of the following, a blood specimen, saliva
12 sample, or thumb or palm print impression is punishable as a
13 separate offense by both a fine of five hundred dollars (\$500) and
14 imprisonment of up to one year in a county jail, or if the person is
15 already imprisoned in the state prison, by sanctions for
16 misdemeanors according to a schedule determined by the
17 Department of Corrections.

18 (b) (1) Notwithstanding subdivision (a), authorized law
19 enforcement, custodial, or corrections personnel, including peace
20 officers as defined in Sections 830, 830.1, 830.5, and 830.55, or
21 subdivision (d) of Section 830.2, may employ reasonable force to
22 collect blood specimens, saliva samples, or thumb or palm print
23 impressions pursuant to this chapter from individuals who, after
24 written or oral request, refuse to provide those specimens,
25 samples, or thumb or palm print impressions.



(2) The withdrawal of blood shall be performed in a medically approved manner in accordance with the requirements of paragraph (2) of subdivision (b) of Section 298.

~~(3) Any individual, agency, or department subject to paragraph (1) shall not incur civil or criminal liability, or any adverse action by the employer, for the good faith use of reasonable force in the collection of blood specimens, saliva samples, or thumb or palm print impressions pursuant to this chapter.~~

(3) The use of reasonable force as provided in this subdivision shall be carried out in a manner consistent with regulations and guidelines adopted pursuant to subdivision (c).

(c) (1) The Department of Corrections and the California Youth Authority shall adopt regulations governing the use of reasonable force as provided in subdivision (b), which shall provide for the following at a minimum:

(A) The term “use of reasonable force” shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this chapter.

(B) The use of reasonable force shall not be authorized without the prior written authorization of the supervising officer on duty. The authorization shall include the specific and articulable facts and circumstances upon which the determination of the need for reasonable force was made by the supervisor.

(C) The use of reasonable force shall be preceded by efforts to secure voluntary compliance with this chapter.

(D) If the use of reasonable force includes a cell extraction, the regulations shall provide that the extraction be videotaped.

(2) The Board of Corrections shall adopt guidelines governing the use of reasonable force as provided in subdivision (b) for local detention facilities, which shall provide for the following at a minimum:

(A) The term “use of reasonable force” shall be defined as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance with this chapter.

(B) The use of reasonable force shall not be authorized without the prior written authorization of the supervising officer on duty.

1 *The authorization shall include the specific and articulable facts*
2 *and circumstances upon which the determination of the need for*
3 *reasonable force was made by the supervisor.*

4 *(C) The use of reasonable force shall be preceded by efforts to*
5 *secure voluntary compliance with this chapter.*

6 *(D) If the use of reasonable force includes a cell extraction, the*
7 *extraction shall be videotaped.*

8 *(3) The Department of Corrections and the Board of*
9 *Corrections shall report to the Legislature not later than January*
10 *1, 2005, on the implementation of this section which shall include,*
11 *but is not limited to, the number of refusals; the number of*
12 *incidents of reasonable use of force under this section; the type of*
13 *force used; the intermediate efforts undertaken to obtain voluntary*
14 *compliance, if any; whether any medical attention was needed by*
15 *the prisoner or personnel as a result of force being used.*

